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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,041	09/28/2001	Yongsoo Chung	876P138	7871

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EXAMINER
PRATT, HELEN F

ART UNIT	PAPER NUMBER
1761	6

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/967,041	CHUNG ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31-36 is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham, Jr. et al.

Graham, Jr. et al. disclose a composition as in claim 31 and 34, in which a single strength vegetable juice is treated with cation exchange to remove undesirable cations from the solution to produce a low-acid juice not from concentrate (col. 2, lines 33-50 , col. 4, lines 45-50). The juice is low-acid as in claim 32 because the pH is 1.5 to 2.5 and not greater than 0.6% which can be neutralized to a palatable level (claims 32 and 35 (col. 3, lines 50-54). The juice has a lower acidity than that of the first juice as the pH is 1.5 to 2.5 as in claims 33 and 36 (col. 4, lines 45-44). Claims 31 and 34 differ from the reference in the use of SOI for a particular juice and in the use of citrus juice (claims 32-35). However, as the standards of identity are known, it would have been within the skill of the ordinary worker to use such known standards if one wanted to produce such a juice. Nothing new is seen in the fact that citrus is claimed as the problem of reducing acidity is shown by the reference. The claims also differ from the reference in the particular process of making the product. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the

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product formed and not the method by which it was produced. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. Therefore, as the limitations of the composition has been shown, it would have been obvious to make such a product as shown by Graham, Jr. et al.

Claims 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dechow et al.

Dechow et al. disclose a reduced acid fruit juice to reduce the amount of acid (abstract) as in claims 31 and 32. The juice can be a not -from -concentrate juice (NFC) (col. 5, lines 25-34). Claims 31 and 34 differ from the reference in the particular process. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. Therefore, it would have been obvious to make a juice as claimed.

Various acidities are disclosed in col. 12, lines 40-55 within the claimed range as in claims 32 and 35. Therefore, it would have been obvious to make a product with the claimed acidity.

Certainly, the acidity as in claims 33 and 36 would have been less than the initial strength juice flow as a juice has been treated as in claim 31. Therefore, it would have been obvious to treat juice to make a lower acidity as claimed.

Allowable Subject Matter

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Claims 1-30 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 7-25-03

H. Pratt
HELEN PRATT
PRIMARY EXAMINER